

Dated

16th January

2015

HIGHWOOD CARE HOMES LIMITED

and

WATERLOOVILLE CARE HOME LIMITED

to

COUNCIL OF THE BOROUGH OF HAVANT

and

WINCHESTER CITY COUNCIL

UNILATERAL UNDERTAKING

Under Section 106 of the Town and Country Planning Act 1990

relating to land at Site E1, Land West of Waterlooville,

Hambledon Road, Denmead

DWF LLP
Bridgewater Place
Water Lane
Leeds
LS11 5DY
Ref: MEG/N28972-253

THIS UNDERTAKING is given on

16th January

2015

BY

- (1) **HIGHWOOD CARE HOMES LIMITED** (company number 9265729) whose registered office is at The Hay Barn, Upper Ashfield Farm, Hoe Lane, Romsey, Hampshire, SO51 9NJ ("Highwood")

and

- (2) **WATERLOOVILLE CARE HOME LIMITED** (company number 9342684) whose registered office is at 2 Kensington Square, Garden Floor, London, W8 5EP ("Waterlooville")

TO

- (1) **WINCHESTER CITY COUNCIL** of City Offices, Colebrook Street, Winchester, Hampshire, SO23 9LJ ("the City Council");

and

- (2) **COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza, Civic Centre Road, Havant, Hampshire, PO9 2AX ("the Borough Council")

BACKGROUND

- (A) The City Council is the local planning authority for the purposes of Part 3 of the 1990 Act for the area within which part of the Site is located.
- (B) The Borough Council is the local planning authority for the purposes of Part 3 of the 1990 Act for the area within which part of the Site is located.
- (C) Highwood is the freehold owner of the Application Site free from encumbrances that would prevent Highwood entering into this Undertaking.
- (D) Waterlooville is the freehold owner of the Nursing Care Home Site free from encumbrances that would prevent Waterlooville entering into this Undertaking.
- (E) Pursuant to the Application Highwood has applied to each of the City Council and to the Borough Council for planning permission for the Development.
- (F) On 28 November 2014 at a joint meeting the City Council and the Borough Council resolved to grant the Planning Permission subject, among other things, to the completion of a planning obligation securing the matters contained herein.

- (G) Highwood and Waterloooville have given this Undertaking with the intention that the obligations contained herein may be enforced by the City Council and the Borough Council against Highwood and Waterloooville and their successors in title.

OPERATIVE PROVISIONS

1 INTERPRETATION

- 1.1 In this Undertaking, the following words and expressions have the following meanings:

"1990 Act"	the Town and Country Planning Act 1990 as amended
"Accommodation Units"	the individual units of accommodation to be provided as part of the Development
"Application"	the application for planning permission for the carrying out of the Development made by the Landowner to both the City Council and the Borough Council and allocated references 14/02215/FUL and APP/14/00854 respectively
"Application Site"	the land which is the subject of the Application shown edged red on Plan 1
"Car Parking Spaces"	the 6 car parking spaces on the Nursing Care Home Site allocated for use by the Development and shown edged with a red dotted line adjacent to the southern boundary on Plan 2
"Care"	care as defined in the Town and Country Planning (Use Classes) Order 1987 such as to provide assistance with day to day living and personal care
"Commence"	the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act (other than an operation set out in clause 3.2)
"Commencement Date"	the date specified in clause 3.1
"Development"	the development of the Site to provide extra care accommodation comprising 48 Accommodation Units and associated communal facilities, access, car parking and landscaping

"New Permission"	a planning permission authorising the redevelopment of the Site in a manner which would if such redevelopment were completed cause the Landowner to be in breach of any or all of the provisions contained in this Undertaking
"Nursing Care Home"	the nursing care home to be constructed on the Nursing Care Home Site
"Nursing Care Home Site"	the land shown edged red on Plan 2 and which includes the Car Parking Spaces
"Occupation"	means occupation (including causing permitting or suffering the taking of occupation) for any purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and the expression "Occupy" shall be construed accordingly
"Operate"	means the functions of: • day to day management; and • provision of Care services and the expression "Operators" and "Operation" shall be construed accordingly
"Plan 1"	the Plan drawing no. 1S1201/E1 dated 05-02-14 appended hereto marked "Plan 1"
"Plan 2"	the Plan drawing no 27961-PD-700 appended hereto marked "Plan 2"
"Planning Permission"	the planning permission that may be granted in pursuant of the Application
"Section 106 Agreement"	the undertaking made under Section 106 of the 1990 Act dated 4 January 2011 by Taylor Wimpey UK Limited to the City Council and the Borough Council
"Site"	the freehold property at Hambledon Road, Waterlooville forming part of the property registered at HM Land Registry

under Title Number SH25743 referred to herein as the Application Site shown edged red on Plan 1 and the Car Parking Spaces shown edged by a red dotted line on Plan 2

1.2 In this Undertaking:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Undertaking and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3 references to any statute or statutory provision include references to:
 - 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.4 references to the Site includes any part of it;
- 1.2.5 references to any party in this Undertaking include the successors in title of that party and references to the City Council or Borough Council include any successor local planning authority exercising planning powers under the 1990 Act for their respective administrative areas;
- 1.2.6 "including" means "including, without limitation";
- 1.2.7 any covenant by the Landowner not to do anything includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.8 where two or more peoples form a party to this Undertaking, the obligations they undertake may be enforceable against them all jointly or against each of them individually; and
- 1.2.9 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Undertaking is to be unaffected.

- 1.3 The parties to this Undertaking do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2 EFFECT OF THIS UNDERTAKING

- 2.1 This Undertaking is given pursuant to Section 106 of the 1990 Act and to the extent that they fall within the terms of Section 106 of the 1990 Act, the obligations contained herein are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable as follows:
- 2.1.1 by the City Council insofar as they relate to development within the administrative boundaries of the City Council;
 - 2.1.2 by the Borough Council insofar as they relate to development within the administrative boundaries of the Borough Council.
- 2.2 This Undertaking may be registered as a local land charge by each of the City Council and the Borough Council.
- 2.3 The obligations in this Undertaking will not be enforceable against a statutory undertaker after the transfer of the statutory operations and any land upon or in which the statutory operations are situated by the Landowner to that statutory undertaker.
- 2.4 Nothing in this Undertaking prohibits or limits the right to develop any part of the Site in accordance with planning permissions other than that relating to the Development granted after the date of this Undertaking whether or not pursuant to an appeal.

3 COMMENCEMENT DATE

- 3.1 The obligations contained in clause 4 and Schedule 1 referred to therein do not come into effect until the date on which the Development Commences (subject to the provisions of clause 3.2)
- 3.2 The Commencement Date will not be triggered by any of the following operations:
- 3.2.1 site investigations or surveys;
 - 3.2.2 site decontamination;
 - 3.2.3 construction of access and service roads;
 - 3.2.4 the demolition of any existing buildings or structures;
 - 3.2.5 the clearance or regrading of the Site;
 - 3.2.6 works connected with infilling; or
 - 3.2.7 works for the provision of drainage or mains services to prepare the Site for development.

4 OBLIGATIONS

- 4.1 Highwood and Waterloooville undertake to the City Council and the Borough Council to comply with its obligations set out in Schedule 1 in relation to the Development and to bind that part of the Site in which each party has an interest.
- 4.2 No person will be liable for any breach of the terms of this Undertaking occurring after the date on which they part with all their interest in the Site or the part thereof in respect of which such breach occurs, but they will remain liable for any breaches of this Undertaking occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of such property will constitute an interest for the purposes of this clause 4.2.
- 4.3 The provisions in the Section 106 Agreement shall cease to be binding on the Site on the Commencement Date.

5 TERMINATION OF THIS UNDERTAKING

- 5.1 This Undertaking will come to an end if:
- 5.1.1 subject to clause 5.2, the Planning Permission is quashed, revoked or otherwise withdrawn at any time so as to render this Undertaking or any part of it irrelevant, impractical or unviable;
 - 5.1.2 the Planning Permission expires before the Commencement Date without having been implemented; or
 - 5.1.3 at any time after the date of this Undertaking the City Council, the Borough Council or any other competent authority grants a New Permission under which development is implemented for the purposes of Section 56 of the 1990 Act.
- 5.2 Clause 5.1.1 will not apply in respect of any minor modifications to the Planning Permission or the Development agreed from time to time between the City Council, the Borough Council, Highwood and Waterloooville prior to the Commencement Date.

6 NOTICES

- 6.1 Any notice, demand or any other communication to be served under this Undertaking will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 6.2 Any notice, demand or any other communication to be served is to be sent to the address of the relevant party set out at the beginning of this Undertaking or to such other address as one party may notify in writing to the others at any time as its address for service.

6.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

6.3.1 if delivered by hand, at the time of delivery;

6.3.2 if sent by post, on the second working day after posting; or

6.3.3 if sent by recorded delivery, at the time delivery was signed for.

6.4 If a notice, demand or any other communication is served after 4:00 pm on a working day, or on a day that is not a working day, it will be treated as having been served on the next working day.

7 **EXECUTION**

Highwood and Waterlooville have executed this Undertaking as a deed and it is delivered on the date set out above.

SCHEDULE 1

Obligations

Highwood and Waterlooville undertake to the City Council and the Borough Council to bind the Site as follows:

- 1 Not to Occupy the Development unless and until
 - (a) the Car Parking Spaces are marked out and are made available in perpetuity for use of the Development; and
 - (b) the Nursing Care Home has been constructed to roof plate level.
- 2 Not to Occupy the Development until the Borough Council and City Council have received in writing details of the Operator of the Nursing Care Home and the Development.

PROVIDED THAT the Development need not be Operated by the same company if:

- (i) details of the identity of the proposed Operator of the Development have been submitted in writing to both the City Council and the Borough Council; and
 - (ii) confirmation has been provided to the City Council and the Borough Council as to the arrangements that have been made by the proposed Operator of the Development to secure the compliance with the provisions of paragraphs 4 and 6 of this Schedule 1; and
 - (iii) the City Council and the Borough Council have confirmed in writing their receipt of the details submitted pursuant to sub-paragraphs (i) and (ii) of this paragraph 2.2 (such confirmation to be issued by the City Council and the Borough Council within ten working days).
- 3 To notify in writing the Borough Council and the City Council within ten working days of any proposed changes to the identity of the company operating the Development.
- 4 That Occupation of each of the Accommodation Units comprising the Development shall be restricted to the following:
 - 4.1 a person who is in need of Care and who has entered into binding arrangements to access such Care and other support services to a minimum of two hours of such Care per week via the Operation of the Development or Nursing Care Home or an alternative Care provider in the vicinity of the Development and who is either:

- 4.1.1 over 60 years of age on the date of taking up residence; or
- 4.1.2 disabled within the meaning of the Equality Act 2010; or
- 4.2 persons who are the spouse, co-habitee or dependent of a person within paragraphs 4.1.1 or 4.1.2 for the duration of the life of that person spouse or co-habitee or dependent.
- 5 To make available copies of the arrangements referred to in 4.1 above for inspection on giving reasonable notice by the Borough Council and the City Council as often as may reasonably be required.
- 6 To ensure that flexible Care and other support services appropriate to the assessed individual needs of occupiers of the Accommodation Units (so as to allow them to live independently) is available to them 24 hours a day and seven days a week.
- 7 Highwood shall at the written request of the Borough and/or City Councils at any time from Occupation and ending 5 years from Occupation of the Development pay to the Borough and/or City Councils such sum as they may reasonably require for the purpose of implementing (which reference shall include all connected administration, supervision and the carrying out of) such traffic management measures as they consider appropriate to ensure that any overspill parking from the Development does not interfere with the capacity, operation or safety of the adjoining local highway network within a radius of 200 metres from the site providing that such sum or sums shall not exceed £5,000 in aggregate.

SIGNED as a deed on behalf of)

HIGHWOOD CARE HOMES LIMITED)

by two directors or a director and the company secretary)

Director

Director

SIGNED as a deed on behalf of)

WATERLOOVILLE CARE HOME LIMITED)

by two directors or a director and the company secretary)

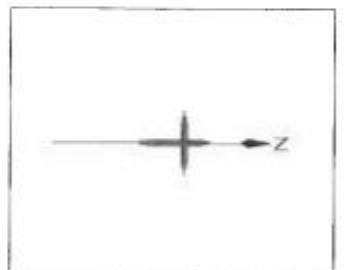
Director

Director

SCALE 1:500



LOCATION PLAN SCALE 1:5000



REV	DATE	DETAILS	BY
1			
JOB OLD PARK FARM, WATERLOOVILLE			
TITLE EXTRA CARE PLOT E1 TRANSFER PLAN			
SCALE AS SHOWN @ A3			
Taylor Wimpey Southern Counties 10000 Old Park Farm, Waterloo Wokingham RG20 2JH Tel: 01329 25341			
DRC No. 1S1201/E1		Rev.	

